IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1434 OF 2005

Noorjaha Abdul Rashid Solkar .. Appellant

versus

Ismail Isak Solkar .. Respondent

Mr.S.M.Kazi for appellant

Mr.A.S.Khandeparkar i/b. Khandeparkar & Associates for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 1st August 2007.

P.C.

. This matter was argued on the last occasion and was placed at the request of Mr.Kazi

till today to enable him to take instructions from the appellants. Mr.Kazi states that he has no instructions and, therefore, this Court should proceed to pass orders.

2. This appeal is directed against the Judgement and decree of the lower appellate court dated 11th August 2005 in Civil Appeal No.170 of 2002. This civil appeal was filed by Respondent-original plaintiff before me, challenging the judgement and decree of the Civil Judge Senior Division in Civil Suit No.102 of 1996. The Civil Judge, Ratnagiri dismissed the suit filed by the Respondent for perpetual injunction and possession of the encroached portion.

3. The subject matter of the suit was a portion of the immovable property i.e. land. Plaintiff's survey No.is C.T.S.778. The case of plaintiff was two fold. His first request was that the court should issue perpetual injunction

restraining the appellants before me from in any manner obstructing his peaceful possession and enjoyment of his property viz., C.T.S.778. The second request was that the appellants have encroached upon a portion of his property and that encroachment be directed to be removed.

4. The trial court after considering the oral and documentary evidence had dismissed the suit in its totality. The lower Appellate Court has partially allowed the appeal, inasmuch as it has decreed the suit to the extent of grant of perpetual injunction in favour of respondent but refused to issue any orders to remove encroachment as there is no material to show that any encroachment was caused by the Appellant.

5. Appellant aggrieved by this decree has filed this appeal. Having heard Mr.Kazi for appellant and Mr.Khandeparkar for respondent so also with their assistance perusing the judgement

of the Courts below, I am of the opinion that no substantial question of law is raised in this appeal. The lower appellate court, has, after considering the oral and documentary evidence produced on record, held that ownership of respondent - plaintiff with regard to C.T.S. 778 stands proved, whereas the request to have the encroachment removed has been rejected. As far as C.T.S. No.778 which belongs to the plaintiff is concerned, the Court below has held that the respondent- plaintiff is the owner of the same. He has proved the ownership of the property. However, Mr.Kazi would submit that this is Government land and the respondent - plaintiff could not lay any claim much less that of ownership with regard thereto. In my view, the controversy between Government and the respondent is not the subject matter of the suit. The nature of the right conferred by the State, limited as it may be, does not in any manner give any cause for complaint to the defendant. As far

as he is concerned, he could not demonstrate that the plaintiff has no right, title and interest in C.T.S. No.778.

6. The submission of Mr.Kazi that the Court below while dismissing the suit has observed that when material is not produced to demonstrate that the defendant has, while, constructing house on C.T.S.No.453 committed Encroachment on suit property, then, no order could have been to protect their possession. I am unable to accept this contention inasmuch as the ownership having been proved so also the courts below finding that the appellant was obstructing possession of respondent plaintiff in respect of suit land, it was in no error in granting the partial decree.

7. As far as the appellant is concerned, she could not point out to me any provision which would disentitle the respondent - plaintiff from claiming a decree of permanent injunction against

her to protect his possession of suit land. Once, the suit was maintainable, then consistent with the oral and documentary evidence, the Court below has passed partial decree.

8. There is no infirmity or error much less perversity in the same. This is not a court of further appeal enabling it to re-appreciate or re-appraise the material. Consequently, there is no merit in the second appeal. It is accordingly dismissed with no costs.

9. In the light of the dismissal of the second appeal, C.A. does not survive and the same is dismissed as such. Interim order, if any, to stand vacated forthwith.

(S.C.DHARMADHIKARI, J)